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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24



DIVISION ONE
FILED: 6/25/2013
RUTH A. WILLINGHAM,
CLERK
BY: mjt

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

RALPH JOHN CHAPA,) No. 1 CA-CV 12-0191
)
Plaintiff/Appellant,) DEPARTMENT C
)
v.) **MEMORANDUM DECISION**
) (Not for Publication -
MCSO EMPLOYEE B0738,) Rule 28, Arizona Rules of
) Civil Appellate Procedure)
Defendant/Appellee.)
)
)

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-021566

The Honorable John Christian Rea, Judge

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

Ralph John Chapa Plaintiff/Appellant <i>in propria persona</i>	Phoenix
William G. Montgomery, Maricopa County Attorney by Joseph I. Vigil, Deputy County Attorney Attorneys for Defendant/Appellee	Phoenix

S W A N N, Judge

¶1 Ralph John Chapa appeals the superior court's order dismissing his complaint with prejudice under Ariz. R. Civ. P. 12(b)(6). For the following reasons, we affirm in part, reverse

in part, and remand the case to allow Chapa the opportunity to file an amended complaint.

FACTS AND PROCEDURAL HISTORY

¶2 In 2011, Chapa, an inmate in custody of the Maricopa County Sheriff's Office ("MCSO"), submitted numerous Inmate Institutional Grievance Appeal Forms to the MCSO. His grievances included allegations that the MCSO "refused [him] services in filing" documents with the court on his behalf, and that the MCSO was denying him access to the courts. An MCSO representative responded to Chapa's grievances by stating that "with a few exceptions," Inmate Legal Services at the MCSO "does not file motions for inmates represented by counsel."

¶3 In December 2011, Chapa filed a complaint in the superior court against Defendant, an MCSO employee. Chapa alleged that by refusing to file his documents with the courts, Defendant had deprived him of his rights under the Arizona Constitution, including: due process of law, petition and assembly, "the administration of justice," privileges and immunities, and the right to communicate with the courts and aid in his own defense. Also in December 2011, Chapa filed a "Motion for TRO [temporary restraining order] and a Preliminary Injunction, Court Intervention, [and] Court Orders," claiming that Defendant was "unlawfully . . . deciding what [he could]

research" and "restricting [his] acces[s] to the court." The court denied the motion.

¶14 In January 2012, Defendant moved to dismiss Chapa's complaint. Defendant contended that Chapa's complaint "fail[ed] to provide any facts to support his claim that any of his constitutional rights have been violated." Further, Defendant argued that Chapa "does not have a constitutional right to act as his own attorney while he is being represented[.]" Defendant pointed out that Chapa had appointed counsel for the criminal case relating to his imprisonment yet still "want[ed] to be able to file his own motions and communicate directly with the judge in his criminal case[.]"

¶15 Chapa filed a response to the motion to dismiss. Chapa attached numerous exhibits illustrating his attempts to have the MCSO mail motions and correspondence to the court, to obtain paper to prepare for his defense, and to obtain legal reference materials. The exhibits showed that the MCSO mailed letters for Chapa to his attorney and to the Arizona Supreme Court, but refused to mail numerous documents to the superior court, including motions and letters related to his criminal case, on the grounds that Chapa was represented by an attorney.

¶16 On February 2, 2012, the superior court granted Defendant's motion to dismiss, without explanation, in an unsigned minute entry. Chapa appealed. In August 2012, we

suspended the appeal and revested jurisdiction in the superior court for the entry of a signed, appealable order. The superior court entered such an order in October 2012 and specified that the dismissal was with prejudice. Thereafter, we reinstated the appeal. We have jurisdiction under A.R.S. §§ 12-120.21(A)(1) and -2101(A)(1).

STANDARD OF REVIEW

¶7 We review the trial court's dismissal of a complaint de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, 355, ¶ 7, 284 P.3d 863, 866 (2012). Under Rule 12(b)(6), a party may move to dismiss an action for "[f]ailure to state a claim upon which relief can be granted" if the pleading does not comply with Rule 8. Ariz. R. Civ. P. 12(b)(6); *Cullen v. Auto-Owners Ins. Co.*, 218 Ariz. 417, 419, ¶ 7, 189 P.3d 344, 346 (2008). Arizona follows the notice pleading standard under Rule 8, which requires "Arizona courts [to] evaluate a complaint's well-pled facts, [so] mere conclusory statements are insufficient to state a claim upon which relief can be granted." *Cullen*, 218 Ariz. at 419, ¶ 7, 189 P.3d at 346. Therefore, a complaint that states only legal conclusions will not satisfy Rule 8 and may be dismissed under Rule 12(b)(6). *Id.*

¶8 Because motions to dismiss for failure to state a claim are not favored, "[d]ismissal is appropriate under Rule 12(b)(6) only if 'as a matter of law [] plaintiffs would not be

entitled to relief under any interpretation of the facts susceptible of proof.'" *Coleman*, 213 Ariz. at 356, ¶ 8, 284 P.3d at 867 (citation omitted). Dismissal with prejudice is warranted when the opportunity to amend the complaint could not cure its defects. See *Sun World Corp. v. Pennysaver, Inc.*, 130 Ariz. 585, 589, 637 P.2d 1088, 1092 (App. 1981).¹

DISCUSSION

I. THE SUPERIOR COURT DID NOT ERR BY DISMISSING CHAPA'S COMPLAINT FOR FAILURE TO STATE A CLAIM, BUT IT DID ERR BY DISMISSING THE COMPLAINT WITH PREJUDICE.

A. Chapa's Complaint Provided Insufficient Factual Support To Demonstrate That His Due Process Rights Were Violated.

¶9 Citing *Bounds v. Smith*, 430 U.S. 817 (1977), Chapa first contends that his right to due process was violated because Defendant denied him access to the trial court by refusing to transmit his motions or mail letters to judges presiding over his case. He alleges that the MCSO would not supply him with paper to prepare his case, and would not provide him with legal reference materials related to his criminal case.

¶10 Chapa is correct that the federal and state constitutions require that inmates receive meaningful access to

¹ "It is well-established . . . that a party who conducts a case without an attorney is entitled to no more consideration from the court than a party represented by counsel, and is held to the same standards expected of a lawyer." *Kelly v. NationsBanc Mortg. Corp.*, 199 Ariz. 284, 287, ¶ 16, 17 P.3d 790, 793 (App. 2000).

the courts, including access to a law library or adequate assistance from persons trained in the law. *Bounds*, 430 U.S. at 828; *State v. Clark*, 196 Ariz. 530, 540, ¶ 47, 2 P.3d 89, 99 (App. 1999). But Chapa's complaint simply alleges that these rights were denied him -- it fails to provide any facts that could give rise to relief in his favor. The complaint therefore does not satisfy the requirements of Rule 8, and we affirm its dismissal.

B. The Trial Court Erred by Dismissing the Complaint with Prejudice.

¶11 Chapa next contends that the trial court erred by dismissing his complaint with prejudice because the trial court did not explain its decision, never gave Chapa "any legal premis[e] to collaterally attack or appeal," and failed to provide Chapa with an opportunity to file an amended complaint. Although Chapa's complaint contained only conclusory legal statements with no factual support, we conclude on this record that it is possible that he may be able to cure this defect by amending his complaint to include sufficient facts.

¶12 The right to meaningful access to courts exists to ensure that an inmate is afforded "a reasonably adequate opportunity to present claimed violations of fundamental constitutional rights to the courts." *Bounds*, 430 U.S. at 825; *Clark*, 196 Ariz. at 540, ¶ 47, 2 P.3d at 99. States "shoulder

affirmative obligations to assure all prisoners meaningful access to the courts[,]” and therefore, “[i]t is indisputable that indigent inmates must be provided at state expense with paper and pen to draft legal documents with notarial services to authenticate them, and with stamps to mail them.” *Bounds*, 430 U.S. at 824-25; *Knight v. Superior Court (State)*, 161 Ariz. 551, 556, 779 P.2d 1290, 1295 (App. 1989) (“[T]he state is constitutionally required to supply an inmate with materials necessary to prepare legal papers,” such as “a reasonable amount of writing paper, pencils, carbon paper, grievance forms, envelopes, and tablets, to enable him to meet his legal needs.”).

¶13 In Arizona, prisoners also have the right to send and receive legal materials without interference from the jail. See *Knight*, 161 Ariz. at 556, 779 P.2d at 1295 (“As long as jail officials do not prevent him from sending or receiving legal materials, no violation of his right to access to the courts has occurred.”). To this end, the Arizona Department of Corrections Manual explicitly provides prisoners with the right to mail legal documents without interference: “Staff who processes outgoing inmate mail may inspect it for contraband, but shall not read or censor mail being sent to . . . [t]he inmate’s attorney, a judge, or court.” Ariz. Dep’t of Corrections Dep’t Order 914.05 (Feb. 26, 2010),

<http://www.azcorrections.gov/policysearch/900/0914.pdf> (last visited June 4, 2013).

¶14 Here, the exhibits that Chapa attached to his response to Defendant's motion to dismiss could allow a finder of fact to infer that the MCSO refused to provide Chapa with paper to draft documents for his criminal case, refused to mail his motions and correspondence to the court on numerous occasions, and refused to provide him with legal reference materials for his criminal matter.

¶15 Defendant contends that she did not deny Chapa access to the courts because he has no constitutional right to hybrid representation under either the federal or the Arizona constitution, and therefore had no right to contact the courts as a pro per litigant because he was (as Chapa has acknowledged) represented by an attorney in his criminal case. But though a criminal defendant has no constitutional right to hybrid representation, the trial court has discretion to allow it. *State v. Cornell*, 179 Ariz. 314, 325, 878 P.2d 1352, 1363 (1994). Moreover, there are times when an inmate may legitimately contact the court even when represented -- for example, if counsel has failed to conduct the representation in a diligent or competent fashion. The determination whether an inmate's communication is appropriate is to be made by the court, not jail staff.

¶16 On this record, Chapa could file an amended complaint stating a cognizable claim. The trial court erred by dismissing the complaint with prejudice.

II. CHAPA HAS FAILED TO PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THE TRIAL JUDGE WAS BIASED.

¶17 Chapa also contends that the trial judge delayed issuing an appealable order on the motion to dismiss "due to his bias of inmate pro-se litigants." We find nothing in the record to support this assertion. "Bias and prejudice mean a hostile feeling or spirit of ill will, or undue friendship or favoritism, toward one of the litigants." *State v. Hill*, 174 Ariz. 313, 322, 848 P.2d 1375, 1384 (1993). "A trial judge is presumed to be free of bias and prejudice." *State v. Rossi*, 154 Ariz. 245, 247, 741 P.2d 1223, 1225 (1987). To rebut this presumption, a party in a criminal case must prove by a preponderance of the evidence that the judge is biased and must file a motion that alleges specific grounds of partiality. *Id.*; Ariz. R. Crim. P. 10.1; see also A.R.S. § 12-409. Here, Chapa did not file such a motion. The mere fact that the superior court did not provide Chapa with a signed appealable order in a timely fashion does not demonstrate that the court was hostile or had any ill will toward Chapa. From this record, we cannot determine any specific cause for the delay.

CONCLUSION

¶18 For the foregoing reasons, we affirm the trial court's grant of the motion to dismiss, reverse the court's ruling that the case be dismissed with prejudice, and remand with the instruction that the order of dismissal be amended to show that the dismissal is without prejudice.

/s/

PETER B. SWANN, Presiding Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Judge

/s/

RANDALL M. HOWE, Judge